



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty Docket No.: 2401.146.US

In re the Patent application of

David C. Hacker et al

Examiner: Unknown

Serial No.: 10/754,493

Group Art Unit: 3736

Filed: January 12, 2004

For: Apparatus and Method for Intraoperative Neural Monitoring

PETITION UNDER 37 C.F.R. §1.47(a)

MAIL STOP: PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

By this Petition, it is respectfully requested that the Declaration for Utility or Design Patent Application (37 C.F.R. 1.63) filed in the U.S. Patent and Trademark Office concurrently with the subject patent application on January 12, 2004 be accepted as having been signed by all the available joint inventors on behalf of the non-signing legal representative of the deceased joint inventor.

The basis for this Petition is 35 U.S.C. §116, 2nd paragraph, 37 C.F.R. § 1.47(a) and MPEP § 409.03(a) and (c).

Copies of the following documents are submitted herewith in support of this Petition:

Exhibit A - Consulting Agreement of August 1, 2000;

Exhibit B - Lionel Rupp Consulting Agreement Work Order Addendum No.1;

Exhibit C - Extension of Consulting Agreement letter dated August 1, 2001;

Exhibit D - Oxford (Rupp) Consulting Agreement Work Order Addendum No. 2;

Exhibit E - Contractor Agreement of September 4, 2001;

Exhibit F - Official Filing Receipt for Provisional Patent Application Serial No. 60/441,471;

Exhibit G - Letter to Jaime A. Frias, Medtronic Xomed, Inc., from Robert H. Epstein, Epstein & Gerken, dated December 12, 2003;

Exhibit H - Letter to Katherine M. Rupp from Eileen F. Horowitz, Medtronic Xomed, Inc., dated December 19, 2003;

Exhibit I - Certified mail receipts for Exhibit H;

Exhibit J - Declaration for Utility or Design Patent Application (37 C.F.R. §1.63) as filed in the U.S. Patent and Trademark Office on January 12, 2004;

Exhibit K - Assignment as filed in the U.S. Patent and Trademark Office on January 12, 2004;

Exhibit L - Emails of March 12, 2004, April 14, 2004 and May 11, 2004 from Eileen F. Horowitz, Medtronic Xomed, Inc., to Laurie Cerroni, of Fischbein, Badillo, Wagner, Harding;

Exhibit M - Letter to Laurie Cerroni, of Fischbein, Badillo, Wagner, Harding, from Eileen F. Horowitz, Medtronic Xomed, Inc., dated May 13, 2004;

Exhibit N - Certified mail receipts for Exhibit M;

Exhibit O - Letter to Eileen F. Horowitz, Medtronic Xomed, Inc., from Donald J. Farinacci, of Fischbein, Badillo, Wagner, Harding, dated June 28, 2004;

Exhibit P - Letter to Donald Farinacci, of Fischbein, Badillo, Wagner, Harding, from Trevor D. Arnold, Medtronic Sofamor Danek, Inc., dated July 7, 2004; and

Exhibit Q - Letter to Trevor D. Arnold, Medtronic Sofamor Danek, Inc., from Donald J. Farinacci, of Fischbein, Badillo, Wagner, Harding, dated July 27, 2004.

A showing of facts in support of this Petition is set forth below with reference to the above-listed documents. The facts presented are based on the undersigned attorney's personal knowledge as attorney of record in the subject application.

As demonstrated by the Consulting Agreement (Exhibit A), Medtronic Xomed

Surgical Products, Inc. entered into an agreement with Centennial Associates on August 1, 2000 by which Centennial Associates would provide consulting services to Medtronic Xomed Surgical Products, Inc. Notably, the Consulting Agreement contractually binds Centennial Associates “for itself and its affiliated persons and entities (collectively “Consultant”)”. As stated in the first paragraph of the Consulting Agreement, Centennial Associates is a division of Oxford Global Resources, Inc., and the term “Consultant” as used in the Consultant Agreement must be construed to encompass Oxford Global Resources, Inc. due to it being an affiliated entity of Centennial Associates. In addition, the essence of the Consulting Agreement is for Centennial Associates to provide consulting services to Medtronic Xomed Surgical Products, Inc., and the individuals assigned by Centennial Associates/Oxford Global Resources, Inc. to provide the actual consulting services to Medtronic Xomed Surgical Products, Inc., must reasonably be considered “affiliated persons” of Centennial Associates bound as “Consultant” to those terms of the Consulting Agreement required to be performed by the individuals providing the actual consulting services.

Lionel Rupp, an employee of Oxford Global Resources, Inc. was assigned to provide consulting services to Medtronic Xomed Surgical Products, Inc. under the Consulting Agreement as evidenced by the Lionel Rupp Consulting Agreement Work Order Addendum No. 1 (Exhibit B) incorporated by reference into the Consulting Agreement. As explained above, Lionel Rupp must reasonably be considered an “affiliated person” of Centennial Associates bound as “Consultant” under the Consulting Agreement and, in particular, must be considered contractually bound under section 6.(d) of the Consulting Agreement relating to the actions required to be performed by individual consultants to secure the intellectual property rights of Medtronic Xomed

Surgical Products, Inc. in technology developed under the Consulting Agreement. Specifically, section 6.(d) of the Consulting Agreement requires "Consultant" to "execute and deliver without further compensation any power of attorney, assignment, application, whether original, continuation, divisional or reissue, or other papers which may be necessary or desirable fully to secure to Medtronic Xomed the inventions ... described in said applications and all patent rights therein". Since a patent application in the U.S. must be executed by the inventor, the contractual duty imposed by section 6.(d) requiring that "Consultant" "execute ... any ... application" must necessarily bind Lionel Rupp to execute any patent application for Medtronic Xomed Surgical Products, Inc. concerning any inventive contributions made by Lionel Rupp to technology developed for Medtronic Xomed Surgical Products, Inc. under the Consulting Agreement.

The term of the Consulting Agreement was extended by mutual agreement of the parties in an Extension of Consulting Agreement letter (Exhibit C) dated August 1, 2001. The extension letter acknowledges the change in name of Medtronic Xomed Surgical Products, Inc. to Medtronic Xomed, Inc. (hereinafter referred to as Medtronic) and incorporates by reference into the Consulting Agreement the Oxford (Rupp) Consulting Agreement Work Order Addendum No. 2 (Exhibit D).

While providing consulting services to Medtronic under the Consulting Agreement, Lionel Rupp was offered a full-time position by Medtronic as a contract employee. The Contractor Agreement (Exhibit E) between Lionel Rupp and Oxford Global Resources, Inc. dated September 4, 2001 and signed by the parties on September 14, 2001 establishes that Lionel Rupp was designated to work as an engineer for Medtronic on a full-time basis at its Jacksonville facility beginning

September 11, 2001. The Contractor Agreement calls for Lionel Rupp to report to David Hacker at Medtronic, David Hacker being one of the joint inventors named in the subject non-provisional patent application and in the provisional patent application on which it is based. The Contractor Agreement specifically defines Lionel Rupp's obligations to Medtronic (referred to as "Client" in the Contractor Agreement) with respect to work performed by Lionel Rupp (referred to as "Contractor" in the Contractor Agreement) for Medtronic. Notably, section 12. of the Contractor Agreement specifies:

- a. "Client shall have sole ownership as works made-for-hire of all inventions, materials and ideas embodied therein resulting from the services of Contractor";
- b. "Contractor agrees to sign appropriate agreements with ... Client(s) consistent with the intent of this paragraph"; and
- c. "Contractor will be personally and individually liable for any violation of this paragraph".

The parties mutually continued to perform pursuant to the terms and conditions of the Consulting Agreement and the Contractor Agreement until Lionel Rupp left Medtronic shortly before his death in the early part of 2003.

On January 22, 2003, Provisional Patent Application Serial No. 60/441,471 was filed in the U.S. Patent and Trademark Office naming David C. Hacker, Stanley A. Skinner, Ensor E. Transfeldt, Lionel Rupp and Peter P. Sterrantino as inventors, as evidenced by the Official Filing Receipt (Exhibit F) for the provisional patent application.

After the provisional patent application was filed, Lionel Rupp was killed in a motorcycle accident. Prior to his death, Lionel Rupp and several of his acquaintances from Medtronic were members of a motorcycle club, and information concerning the name and whereabouts of his daughter, Katherine Rupp, and the circumstances of his

death came to the attention of Medtronic through one or more members of the motorcycle club who became aware of the accident. It is believed that Curtis D. Kinghorn, former Senior Patent Counsel of Medtronic, established initial contact with Katherine Rupp by telephone following Lionel Rupp's death and that, from this contact, it was learned that Katherine Rupp was to be appointed executor of Lionel Rupp's estate. Documentation relating to Medtronic's initial contact with Katherine Rupp is unavailable because Curtis D. Kinghorn has since resigned from the company.

By letter (Exhibit G) dated December 12, 2003, the subject non-provisional patent application prepared by the law firm of Epstein & Gerken and claiming priority from Provisional Patent Application Serial No. 60/441,471 was sent to Medtronic along with a Declaration and an Assignment for execution by the available joint inventors and by the legal representative of the deceased joint inventor, Lionel Rupp.

Based on information available to Medtronic, the Declaration was completed so far as possible to include the residence and mailing addresses and citizenship for the available joint inventors and for Katherine Rupp, the legal representative of the deceased joint inventor, with any missing information to be filled in on the Declaration by the appropriate individuals during execution. In the case of Katherine Rupp, her citizenship was not known, and the citizenship box for Katherine Rupp was left blank on the Declaration for her to fill in during execution.

In order to arrange for execution of the Declaration and Assignment by Katherine Rupp as legal representative for Lionel Rupp, Medtronic attempted to contact Katherine Rupp by telephone but found the phone number to have been disconnected as noted in the letter (Exhibit H) of December 19, 2003 to Katherine Rupp from Eileen F. Horowitz, Senior Paralegal for Medtronic. This letter, which was sent to Katherine Rupp

via certified mail with return receipt requested (Exhibit I), followed the unsuccessful attempt to reach Katherine Rupp by telephone and in it Eileen Horowitz asked Katherine Rupp to telephone her to discuss the filing of the non-provisional patent application naming her father Lionel Rupp as a joint inventor.

In the meantime, the Declaration and Assignment were forwarded to the available joint inventors and were executed by Ensor E. Transfeldt and Peter P. Sterrantino on December 29, 2003, by David C. Hacker on December 30, 2003 and by Stanley A. Skinner on January 5, 2004. The Declaration (Exhibit J) and Assignment (Exhibit K) thusly executed by all the available joint inventors was filed in the U.S. Patent and Trademark Office on January 12, 2004 concurrently with the subject non-provisional patent application, which was assigned Serial No. 10/754,493.

Eventually Katherine Rupp responded to the letter from Medtronic by telephoning Eileen Horowitz and instructing Eileen Horowitz to forward any documents requiring her signature on behalf of Lionel Rupp to Laurie Cerroni of Fishbein, Badillo, Wagner, Harding, the law firm representing the estate of Lionel Rupp. Ms. Horowitz spoke with Ms. Cerroni by telephone and emailed her on March 12, 2004 (Exhibit L), attaching the documents establishing the obligation on Lionel Rupp and, therefore, on his legal representative, to execute the application papers for the subject non-provisional patent application. Having failed to receive a response to her email of March 12, 2004, Ms. Horowitz attempt to secure a response from Laurie Cerroni in an email dated April 14, 2004 (Exhibit L) and again in an email of May 11, 2004 (Exhibit L).

A Notice to File Missing Parts of Non-Provisional Application was issued by the U.S. Patent and Trademark Office on April 14, 2004 in connection with the subject non-provisional patent application Serial No. 10/754,493. By this notice, a Declaration

executed by Katherine Rupp and identifying her citizenship was required to be submitted in order to avoid abandonment of the application.

On May 13, 2004, still having not received a response from Laurie Cerroni, Eileen Horowitz proceeded to send the Declaration and Assignment previously executed by the available joint inventors to Laurie Cerroni for execution by Katherine Rupp as evidenced by the letter (Exhibit M) of May 13, 2004 sent to Ms. Cerroni by certified mail return receipt requested (Exhibit N). In response, Ms. Horowitz received a letter (Exhibit O) dated June 28, 2004 from Donald J. Farinacci, a partner with Fishbein, Badillo, Wagner, Harding, requesting additional information. Mr. Farinacci's request for additional information was addressed and responded to by Trevor D. Arnold, Senior Patent Counsel for Medtronic, in a letter (Exhibit P) to Mr. Farinacci dated July 7, 2004. Mr. Arnold's letter explains the contractual and common law duties imposed on Lionel Rupp, and in view of his death on his legal representative, to fully execute the Declaration and Assignment for the subject patent application. In a letter (Exhibit Q) dated July 27, 2004 from Donald Farinacci to Trevor D. Arnold, Mr. Farinacci stated the position that the estate of Lionel Rupp will not "execute and deliver an assignment or any other documents".

From the above, it is seen that Lionel Rupp had a contractual duty to execute the Declaration and Assignment for the subject patent application by virtue of the Consulting Agreement and the Contractor Agreement, which express the plain intention of the parties that Medtronic retain ownership of any and all inventions resulting from services provided by Lionel Rupp for Medtronic. In addition, at the very least, Lionel Rupp had a common law duty to execute the Declaration and Assignment in view of Medtronic's common law property right to any inventions resulting from his work for

Medtronic as works made-for-hire. In view of Lionel Rupp's death, his legal representative, Katherine Rupp, is legally bound to execute the application papers for the subject patent application.

It is further seen from the above, that numerous attempts were made by Medtronic to obtain Katherine Rupp's execution of the Declaration and Assignment and that the Declaration and Assignment executed by all of the available joint inventors were in fact sent to and received by the law firm representing the estate of Lionel Rupp. The facts show that the estate of Lionel Rupp, through the law firm representing it, has refused to execute the Declaration and Assignment.

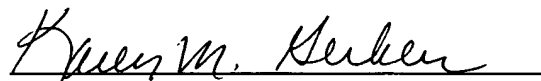
37 C.F.R. §1.47(a) and 35 U.S.C. §116 allow an application for patent to be filed by all the available joint inventors on behalf of themselves and a joint inventor who refuses to join in the application. As stated in the MPEP §409.03(c), 37 C.F.R. §1.47 applies to the situation where a known legal representative of a deceased joint inventor refuses to make application. The Declaration which was filed concurrently with the subject patent application was signed by all the available joint inventors with the signature block of the non-signing legal representative of the deceased joint inventor left blank and should be treated as having been signed by all the available joint inventors on behalf of the non-signing legal representative of the deceased joint inventor pursuant to MPEP §409.03(a)(A). Proof that the non-signing legal representative of the deceased joint inventor refuses to execute the application papers has been provided as required by MPEP §409.03(a)(B). The last known address of the non-signing legal representative of the deceased joint inventor is stated in the Declaration as required by MPEP §409.03(a)(C). As explained above, the citizenship for Katherine Rupp was not known and therefore not provided in the Declaration filed

for the subject patent application, and this defect cannot be corrected in view of Katherine Rupp's refusal to execute the Declaration and provide her citizenship during execution.

In light of the foregoing, it is respectfully requested that this Petition be granted and that the Declaration filed in the U.S. Patent and Trademark Office concurrently with the subject non-provisional patent application Serial No. 10/754,493 be accepted pursuant to 37 C.F.R. § 1.47(a) and 35 U.S.C. §116. It is hereby further requested that the Notice to File Missing Parts of Non-Provisional Application be withdrawn and that the application be considered as having no parts missing. Since a late-filed Declaration is not being submitted, the late Declaration surcharge set forth in the Notice to File Missing Parts of Non-Provisional Application does not apply. This Petition is being submitted with the required petition fee and a request for a four-month extension of time within which to respond to the Notice to File Missing Parts of Non-Provisional Application. Both fees are being paid herewith via USPTO Credit Card Form PTO-2038.

Early, favorable action on this Petition is courteously solicited.

Respectfully submitted,


Karen M. Gerken
Registration No. 31,161

EPSTEIN & GERKEN
1901 Research Boulevard, Suite 340
Rockville, Maryland 20850
(301) 610-7634

Hand-Delivered: 10-14-04



EPSTEIN & GERKEN
1901 Research Boulevard
Suite 340
Rockville, Maryland 20850-3164
(301) 610-7634

Atty Docket No.: 2401.146.US

In re the PATENT application of

David C. Hacker et al

Examiner: Unknown

Serial No.: 10/754,493

Group Art Unit: 3736

Filed: January 12, 2004

For: Apparatus and Method for Intraoperative Neural Monitoring

MAIL STOP: PATENT APPLICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith are the following documents for filing in the subject patent application:

Petition Under 37 C.F.R. §1.47(a) including Exhibits A-Q;

USPTO Credit Card Payment Form (PTO-2038) in the amount of \$130.00;

Petition for Extension of Time; and

USPTP Credit Card Payment Form (PTO-2038) in the amount of \$1530.00.

Respectfully submitted,

Karen M. Gerken
Registration No. 31,161

Hand-Delivered: 10-14-04



Medtronic Xomed
6743 Southpoint Dr. N.
Jacksonville, Florida 32216-0980

tel 904.296-9600

CONSULTING AGREEMENT

THIS AGREEMENT is made and entered into as of August 1, 2000 ("Effective Date") by and between **Medtronic Xomed Surgical Products, Inc.** a Delaware corporation with offices at 6743 Southpoint Drive North, Jacksonville, Florida 32216, for itself and its affiliated entities ("Medtronic Xomed"), and **Centennial Associates, a division of Oxford Global Resources, Inc.** with an office located at 4 Centennial Drive, Peabody, MA 01960, for itself and its Affiliated persons and entities (collectively "Consultant").

WITNESSETH:

WHEREAS, Medtronic Xomed desires to obtain, and Consultant agrees to provide, services as detailed herein.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Nature of Services. Consultant will provide Medtronic Xomed with consulting services ("Services") as described in, and in accordance with, Work Order Addendum(s) attached to this Agreement (or otherwise later added by written agreement of the parties), and made part of this Agreement. Each Work Order Addendum shall contain specifications regarding Services and items to be prepared and delivered by Consultant in connection therewith and such other provisions as Medtronic Xomed may require.

2. Fees and Payment.

(a) Fees. For satisfactory and timely delivery of Services, Medtronic Xomed agrees to pay Consultant the sum(s) to be described in the applicable Work Order Addendum(s) made part of this Agreement as provided herein.

(b) Assignment Consideration. In consideration for the assignment of any intellectual property rights by Consultant to Medtronic Xomed, Medtronic Xomed agrees to pay Consultant the sum of ten dollars (\$10.00). Said fee is independent of and in addition to any other fees and/or payments specified in this Section 2.

(c) Invoices. Consultant shall invoice Medtronic Xomed weekly for Services provided to Medtronic Xomed during the preceding week. Invoices will be rendered based on time slips that Consultant provides to its Employees and that must be signed by a Medtronic Xomed representative who has the authority to approve the time slip. The signing of the time slip by Medtronic Xomed confirms that Consultant has worked the hours reported.

(d) Payment. Undisputed invoices shall be due and payable by Medtronic Xomed thirty (30) days after the date of each such invoice.

3. Term.

(a) Duration of Term. This Agreement shall commence as of the Effective Date and terminate on July 31, 2001.

(c) Termination of Agreement. This Agreement and/or any Work Order Addendum(s) may be terminated by Medtronic Xomed or Consultant with thirty (30) days written notification. If the work performed does not meet the standards required by Medtronic Xomed ("Performance Standards"), the thirty (30) days notification will be waived. Medtronic Xomed has the right to determine Performance Standards in its sole discretion.

4. Independent Contractor. Consultant and its employees and contractors shall be deemed to be independent contractors in the performance of Services and shall not be considered agents, employees, joint venturers or partners of Medtronic Xomed. Neither Consultant nor any of its representatives shall have the power or right to bind Medtronic Xomed by any representation, act or omission.

5. Conversion. Assignments are made with the understanding that Medtronic Xomed will not employ or otherwise utilize directly or indirectly Consultant's assigned personnel ("Employee") until said Employee's current assignment to Medtronic Xomed's premises exceeds 1,000 hours. Medtronic Xomed understands that Consultant's Employee is a unique and valuable asset of Consultant. Should Medtronic Xomed find it advisable or desirable to transfer the Employee to its payroll prior to the completion of the 1,000 hour minimum assignment, Medtronic Xomed hereby agrees to pay Consultant twenty percent (20%) of the Employee's billable volume based upon forty (40) hour work weeks. This percentage will be reduced by six and one third percent (6.335%) for each 333.5 hours the Employee has worked for Consultant at Medtronic Xomed. Based on this calculation, Medtronic Xomed would not owe and Consultant would not be due any payment if any assigned personnel were hired by Medtronic Xomed once the 1,000 hours have been exhausted.

6. Ownership of Works of Authorship and Invention.

(a) All items developed or prepared for Medtronic Xomed by Consultant hereunder (whether or not completed) together with all modifications, revisions, changes, copies, partial copies, translations, compilations, partial copies with modifications and derivative works, all intangibles associated therewith including, without limitation, trademarks, trade names, copyrights, patents, and records (whether written or electronically kept), and all work performed hereunder, including but not limited to the development, modification or enhancement of design concepts and all other documentation developed for or relating to the item and all documents, data and other information of any kind, including information incorporating, based upon, or derived from the foregoing, including reports and notes prepared by Consultant and its employees and agents ("Materials"), constitute confidential information and are, shall be and shall remain the property of Medtronic Xomed and may not be used by Consultant or its employees or agents for any purpose

except for the benefit of Medtronic Xomed. Neither Consultant nor its employees or agents shall sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Materials or copies thereof, and Consultant and its employees and agents shall treat same as confidential information of Medtronic Xomed.

(b) All applicable rights to patents, copyrights, trademarks, trade secrets and all other property rights in the Materials are, shall be and shall remain in Medtronic Xomed, and neither Consultant nor its employees or agents shall have any property interest in the Materials. Consultant acknowledges that all "works of authorship" (as defined in 17 U.S.C. sec. 102) produced as a result of Services performed for Medtronic Xomed hereunder shall meet the definition of "works made for hire" (as defined in 17 U.S.C. sec. 101) and Medtronic Xomed shall be considered the author and owner of such works under 17 U.S.C. sec. 201(b). In the event that any of the Materials do not meet the definition of "works made for hire," then Consultant shall be deemed to have hereby assigned and transferred to Medtronic Xomed, for good and valuable consideration, all of its copyrights in and to such Materials. The rights assigned herein include, but are not limited to, the right to reproduce said Materials, the right to distribute copies of said Materials, and all other rights accruing to Consultant under the provisions of 17 U.S.C. sec. 106.

(c) Medtronic Xomed has the right to register all copyrights in Materials acquired from Consultant hereunder in Medtronic Xomed's own name and shall have the exclusive right to dispose of such Materials in any way Medtronic Xomed deems appropriate. Consultant waives its right in every country of the world to bring any action against Medtronic Xomed which relates to copyright, author's rights, moral rights or any equivalent theory, in these acquired works. Consultant shall retain no right in such works whatsoever.

(d) Consultant agrees to assist Medtronic Xomed in identifying inventions and filing applications for Letters Patent, if any, which cover any technology developed under this Agreement. Consultant further agrees to promptly, upon request of Medtronic Xomed, communicate any facts known respecting said applications and the inventions set forth therein, and execute and deliver without further compensation any power of attorney, assignment, application, whether original, continuation, divisional or reissue, or other papers which may be necessary or desirable fully to secure to Medtronic Xomed the inventions and any of them described in said applications and all patent rights therein, in the United States and in any foreign country, and to cooperate and assist in the prosecution of interference proceedings involving said inventions and in the adjudication and re-examination of said Letters Patent, provided the reasonable expense which may be incurred by Consultant in lending such cooperation and assistance is paid by Medtronic Xomed.

(e) Without limiting any of the foregoing, Consultant agrees to give Medtronic Xomed and any person designated by Medtronic Xomed reasonable assistance required to perfect the rights defined in this Section 5. Unless otherwise requested by Medtronic Xomed, upon the completion of Services to be performed hereunder, or upon the earlier termination of this Agreement for any reason, Consultant shall immediately turn over to Medtronic Xomed all Materials developed pursuant hereto and no copies thereof shall be retained by Consultant or its employees without the prior written consent of Medtronic Xomed. A certificate evidencing compliance with this provision shall, if requested by Medtronic Xomed, accompany such Materials. All items developed pursuant

to this Agreement shall bear Medtronic Xomed's copyright and trade secret notices in the form required by Medtronic Xomed.

7. Indemnification and Insurance.

(a) Consultant hereby agrees to indemnify and hold harmless Medtronic Xomed or any of its affiliates and their respective directors, officers, employees, agents, representatives or subcontractors, from any and all losses, liabilities, damages, injuries, causes of action, claims, demands and expenses, whether based upon tort, breach of contract, proprietary right infringement, failure to pay taxes of any kind, failure to obtain worker's compensation insurance or otherwise, including the payment of reasonable attorney's fees and legal expenses, arising from or on account of any intentional or negligent act or omission of Consultant during the performance of Services herein provided.

(b) Consultant agrees to defend at its own cost and expense any claim or cause of action against Medtronic Xomed or any of its affiliates and their respective directors, officers, employees, agents, representatives or subcontractors, and to indemnify and hold harmless Medtronic Xomed and such persons from any and all losses, liabilities, damages, injuries, demands and expenses associated with the actual or alleged infringement of any patent, copyright or other property right based on any Services or Materials furnished to Medtronic Xomed by Consultant pursuant to the terms of this Agreement or the use thereof by Medtronic Xomed. If Medtronic Xomed's use of any Materials is enjoined by any court, Consultant will obtain, at no expense to Medtronic Xomed, the right to continue to use such Materials or provide a substitute functionally equivalent to the Materials. If Consultant is unable to comply with the foregoing options, Medtronic Xomed shall receive a full refund of all amounts paid to Consultant for the Materials upon return of the Materials to Consultant.

(c) Consultant shall maintain throughout the term of this Agreement all necessary insurance against injuries or damage to any person or property which are the result of the fault or negligence of Consultant and shall provide proof of such insurance to Medtronic Xomed upon its request.

8. Limitation of Liability. Each party's liability arising out of this Agreement shall be limited to the other party's direct damages and shall not exceed the fee(s) paid to Consultant by Medtronic Xomed for the services rendered hereunder. In no event shall either party be liable for punitive damages, loss of profit, goodwill or other special consequential damages suffered by the other party under this Agreement whether in contract or in tort, even if advised of the possibility of such damages.

9. Confidentiality.

(a) Consultant acknowledges and agrees that this Agreement creates a privileged and confidential relationship between Medtronic Xomed and Consultant and that information and materials concerning Medtronic Xomed's business affairs, business strategies, pricing, costs, employee compensation, marketing plans, developmental plans, customers, vendors, finances, properties, methods of operations, technology, procedures, computer programs and documentation, inventions, developments, trade secrets, and other such information, whether written or oral, is

confidential in nature. All such information is hereinafter collectively referred to as "Confidential Information." Neither Consultant nor his employees or agents shall use, directly or indirectly, for their own benefit or the benefit of others, both during the term of this Agreement and subsequent to its termination, any Confidential Information that may be acquired or developed in connection with or as a result of the performance of this Agreement.

(b) Consultant hereby acknowledges that all of the Confidential Information is and shall continue to be the exclusive property of Medtronic Xomed, whether or not prepared in whole or in part by Consultant and whether or not disclosed to or entrusted to the custody of Consultant. Consultant further hereby acknowledges that all Confidential Information has been disclosed to Consultant solely pursuant to his relationship with Medtronic Xomed under this Agreement and solely for the purpose of assisting him in performing under this Agreement.

(c) Consultant hereby agrees that neither it nor its employees or agents shall, either during the term of this Agreement or at any time thereafter, disclose any Confidential Information, in whole or in part, to any person or entity, for any reason or purpose whatsoever, unless Medtronic Xomed shall have given its written consent to such disclosure. Consultant further agrees that it and its employees and agents shall: (i) exercise reasonable care to prevent dissemination of Confidential Information to third persons; (ii) not make copies of documents, including, without limitation, drawings, notebooks, reports, and video or audio recordings, which embody any Confidential Information unless necessary for Consultant performing under this Agreement; and (iii) not disclose or use Confidential Information in any way that might injure or jeopardize the operations of Medtronic Xomed or any of its clients.

(d) Consultant acknowledges that disclosure of any Confidential Information by Consultant or its employees or agents or an actual or threatened breach by Consultant or its employees or agents of the provisions of this Section will give rise to irreparable injury to Medtronic Xomed, its subsidiaries and/or affiliated companies or the owner of such information, inadequately compensable in damages. Accordingly, Medtronic Xomed or such other party shall be entitled to injunctive relief restraining Consultant or its employees or agents from the breach or threatened breach of the foregoing undertakings. Nothing herein shall be construed as prohibiting Medtronic Xomed or any of its subsidiaries or affiliates from pursuing any other remedies available to any of them for such breach or threatened breach, including the recovery of damages from Consultant.

(e) Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests of Medtronic Xomed, its subsidiaries and/or affiliated companies and are reasonable in scope and content.

10. Representations and Warranties of Consultant. Consultant represents and warrants to Medtronic Xomed that:

(a) Consultant and its employees and agents have all necessary rights, authorizations or licenses to perform their obligations hereunder. This Agreement represents the valid and legally binding obligation of Consultant.

(b) Each of Consultant and its employees and agents assigned to perform Services hereunder will perform in a competent and professional manner in accordance with this Agreement and industry standards.

(c) Medtronic Xomed shall receive free, good and clear title to all items developed under this Agreement.

(d) Each item developed under this Agreement shall be free from defects in material and workmanship and conform to the Performance Standards and any specifications set forth in a Work Order Addendum.

(e) There are no actions, suits, or proceedings instituted or pending or threatened against Consultant, or obligations or liabilities of Consultant, that might have a material adverse effect on Consultant's ability to perform its obligations hereunder.

(f) Each of Consultant and its employees and agents assigned to perform Services hereunder shall perform such services in good faith and shall not knowingly or negligently provide Services or Materials that infringe any patent, trademark, copyright, or other intellectual property rights of any third party.

11. Representations and Warranties of Both Parties. Medtronic Xomed represents and warrants to Consultant that:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and in all jurisdictions where it does business, and has all requisite corporate power and authority to execute, deliver and perform the terms of this Agreement.

(b) The execution, delivery and performance of the obligations of this Agreement have been validly authorized by all necessary corporate action, and this Agreement represents its valid and legally binding obligation.

12. Assignment. The parties recognize that Consultant has unique and particular skills and that Medtronic Xomed has chosen Consultant to perform Services enumerated in this Agreement and the Work Order Addendum(s) on the basis of those skills. Thus, Consultant's obligations under this Agreement are not assignable, in whole or in part, without the prior written consent of Medtronic Xomed.

13. Publicity. Consultant shall not use the name or symbol of Medtronic Xomed without securing Medtronic Xomed's prior written consent.

14. Notice. All notices and other communications hereunder will be in writing and validly given if delivered by hand, facsimile transmission, expedited delivery service or United States mail, registered or certified, return receipt requested, and addressed to the respective addresses as set forth below, or such other address as may be designated pursuant hereto, and effective upon posting:

If to Medtronic Xomed:

Medtronic Xomed Surgical Products, Inc.
6743 Southpoint Drive North
Jacksonville, Florida 32216
Attention: Jaime A. Frias, Esq.
Telephone: (904) 296-9600
Facsimile: (904) 281-2779

If to Consultant:

Centennial Associates, a division of Oxford Global Resources, Inc.
4 Centennial Drive
Peabody, MA 01960
Attention: Joseph Pritzky, Esq.
Telephone: (888) 842-3225, ext. 11
Facsimile: _____

15. Survival. The provisions of this Agreement intended to survive the performance thereof by either party or both parties hereto shall so survive the termination of this Agreement.

16. Severability. In the event any provision of this Agreement is deemed invalid, the remaining provisions shall remain in full force and effect.

17. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of Florida, without regard to any rules of conflict or choice of laws. The parties (i) agree that any legal proceeding arising out of this Agreement shall be brought in the United States District Court for the Middle District of Florida, and (ii) waive any objection to the laying of venue of any such proceeding in such court. The prevailing party will be entitled to costs and reasonable attorneys' fees.

(b) The section headings in this Agreement are for reference only and do not modify or restrict any of the provisions hereof.

(c) This Agreement shall not be valid until signed and accepted by both parties. The parties agree that this Agreement may only be amended in writing by the parties.

(d) This Agreement (including any Work Order Addendum(s) and any other attachment(s) hereto) constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, negotiations and discussions, written or oral, of the parties relating to the transactions contemplated hereby.

(e) The failure by either party to enforce, or the written waiver of, any term or condition of this Agreement or the acceptance of any payment hereunder shall not be deemed a waiver of

further enforcement of that or any other term or condition.

(f) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year first above written.

MEDTRONIC XOMED SURGICAL PRODUCTS, INC.

By: 

Name: George Campbell

Title: Vice President, Human Resources

CENTENNIAL ASSOCIATES, a division of
OXFORD RESOURCES, INC.

By: 

Name: Joseph Pritzky

Title: Corporate Counsel

LIONEL RUPP CONSULTING AGREEMENT

WORK ORDER ADDENDUM NO. 1

Lionel Rupp will perform engineering design work, prepare engineering drawings and specifications for the High Intensity Focused Ultrasound (HIFU) technology. Additionally, he will assist with XPS® Model 3000 console development. His tasks will include prototyping models to show at the American Academy of Otolaryngology in September of 2000.

Billing Rate: \$79.00 per hour

Per Diem Expenses: INCLUDED in Billing Rate.

Accepted and agreed to this 7 day of August, 2000

Medtronic Xomed Initials :

Consultant Initials:



Medtronic Xomed
6743 Southpoint Dr. N.
Jacksonville, Florida 32216-0980

tel 904.296.9600

August 1, 2001

Centennial & Associates
a division of Oxford Global Resource, Inc.
4 Centennial Drive
Peabody, MA 01960

Re: Extension of Consulting Agreement

Dear Mr. Pritzky:

Centennial & Associates and Medtronic Xomed Surgical Products, Inc. (now known as Medtronic Xomed, Inc.) entered into a Consulting Agreement on August 1, 2000 (the "Agreement"). This Agreement was scheduled to terminate on July 31, 2001, however, the parties have agreed to extend the Term of the Agreement until December 31, 2001. All capitalized terms used herein shall have the same meaning as in the Agreement.

Attached to this Letter Agreement is Work Order Addendum No. 2 covers the Fees and Services to be performed during the extended Term and shall supercede Work Order Addendum No. 1.

Please sign the bottom of this letter and initial the Work Order to acknowledge your agreement with the contents of these documents. Please keep one copy of the letter and the Work Order for your files.

Very truly yours,

Timothy J. Kriewall, Ph.D.
Vice President, Research & Development

Accepted and agreed to.

CENTENNIAL & ASSOCIATES
a division of Oxford Global Resources, Inc.

Thanks Timothy,

By:
Name: Joseph Pritzky
Title: Corporate Counsel

OXFORD (RUPP) CONSULTING AGREEMENT

WORK ORDER ADDENDUM NO. 2

Services:

Lionel Rupp will perform engineering design work for the Nerve Integrity Monitor (NIM) project. His work will include design analysis, building prototypes, ordering materials, preparing engineering drawings, specifications and reports, maintaining technical records and preparing cost estimates.

Fees:

Billing Rate: \$75.00

Per Diem Expense: included in billing rate

Accepted and agreed this 1st day of August, 2001

Medtronic Xomed Initials: YJK 8/13/01

Consultant Initials: 

CONTRACTOR AGREEMENT

This agreement made this 4th day of September 2001 by and between Lionel Rupp (hereinafter referred to as "Contractor") and Oxford Global Resources, Inc. (hereinafter referred to as "Oxford")

Whereas, Oxford is engaged in the business of placing contract employees to perform services on a temporary basis to third-party businesses (hereinafter referred to collectively as "Clients" or individually as "Client");

Whereas, Contractor desires to be placed on a temporary basis by Oxford with one or more of these Clients,

Now, therefore in consideration of the mutual covenants contained herein, the parties agree as follows.

1. Contractor agrees to submit a completed time card at the end of each week, written in ink and signed by a Client supervisor. Contractor also agrees to fax Oxford no later than 5:00 P.M. (Pacific Time) on Monday to report hours worked the previous week. Contractor understands that failure to call in hours before 5:00 P.M. (Pacific Time) on Monday will result in a delay of payment of wages, and that Contractor shall be solely responsible for such delay. In addition, Contractor agrees that wages will not be released unless a properly signed time slip has reached Oxford. Also, Contractor agrees to accurately report all hours worked, including all overtime hours and agrees not to work any overtime hours unless he/she is authorized by the Client to do so.

2. If Contractor fails to work on any day or any part thereof, for any reason whatsoever, he/she shall not be entitled to any compensation for the time not worked.

3. Contractor agrees to provide Oxford five (5) days notice of intent to terminate any assignment with Oxford. Contractor understands that the length of any assignment may be terminated at will by the Client. Accordingly, no advance notice of termination of an assignment from the Client or from Oxford is required. It should be remembered that subject to the aforementioned notice provisions applicable to the Contractor, employment is at the mutual consent of Contractor and Oxford. Consequently, either Contractor or Oxford may terminate the employment relationship at will, at any time, with or without cause or advance notice.

4. Contractor understands that he/she shall be an employee of Oxford while on any assignment and shall be responsible to advise Oxford promptly of any problems, complaints, legal issues, or questions that Contractor has concerning his/her employment, status or work treatment while on any such assignment. The employee shall remain an employee of Oxford at all times and shall not be considered an employee of the Client, or entitled to, or eligible to participate in any benefits given or extended by the Client to the employees of the Client.

5. Oxford has the exclusive responsibility and authority to negotiate with Clients regarding the rate at which services are to be performed. Contractor understands that pay rates involve sensitive and confidential information. Accordingly, Contractor hereby agrees not to divulge pay rates to any Client, employee, manager, other Contractor, or third party.

6. For a period of six (6) months following termination of his/her last Oxford assignment with the Client, Contractor shall not accept any employment with or agree to provide services, whether directly or indirectly through another third party, to any Client organization for which he/she has been assigned by Oxford. Contractor acknowledges that Oxford shall have the right to enforce this contract, as well as recover damages jointly and severally from the Contractor and any involved third parties associated with any violation to this paragraph.

7. Contractor agrees to report immediately to Oxford any accident or injury that Contractor sustains while engaged in the Client's business or on the Client's property.

8. This Agreement constitutes the entire agreement between Oxford and Contractor with respect to the subject matter therefore. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

9. The Agreement may be altered, varied, revised, amended or otherwise modified only in writing signed by both Oxford and Contractor.

10. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

11. If any of the terms or conditions of this Agreement shall be found to be illegal and/or unenforceable, then, notwithstanding that determination, the remainder of this Agreement shall remain in full force and effect and such illegal and/or unenforceable terms and conditions shall be deemed stricken.

12. Contractor agrees that he/she shall hold in strictest confidence and not disclose to any third parties confidential information acquired concerning Oxford or Client(s) of Oxford which shall include without limitation, information relating to research, development, trade secrets or business affairs, but shall not include information known prior to this Agreement or readily ascertainable by a person of ordinary skill in the assigned area of technical expertise. Client shall have sole ownership as works made-for-hire of all inventions, materials and ideas embodied therein resulting from the services of Contractor. Furthermore, Contractor shall not divulge or utilize confidential or proprietary knowledge gained from any third party during the course of his/her assignment without the third party's written consent. Oxford assumes no responsibility for the use or disclosure of clients' confidential or proprietary information. Contractor will be personally and individually liable for any violation of this paragraph. Contractor agrees to sign appropriate agreements with Oxford and Client(s) consistent with the intent of this paragraph.

13. Contractor acknowledges that he/she has the option of participating in Oxford's Group Life and Health Insurance Program. Should Contractor elect to participate in such Insurance Program, he/she shall check the appropriate box below and submit the necessary application and fees. If Contractor declines to participate in the Insurance Program he/she shall check the appropriate box below or check no box at all. Contractor may be required to furnish satisfactory evidence of insurability for himself/herself and any dependents, should Contractor apply for enrollment in the Insurance Program at a later date.

I wish to participate ☒ I wish not to participate ☐

14. Special Arrangements

15. The rate of this assignment is \$ 22.00 per hour, and if applicable, the overtime rate for this assignment is \$ 22.00 per hour.

This assignment is at: Modtronic

Address: 6743 Southpoint Drive North, Jacksonville, FL 32216

Report to: David Hacker

Phone: 904-332-8955

Start Date: 9/11/01

Position: Engineer

(Subject to change or cancellation by client)

Normal Hours of Work: 40

Contractor, by signing below, signifies that Contractor has read this Agreement, understand its provisions, and freely and voluntarily agrees to the terms as stated herein.

[Signature] OXFORD SIGNATURE

9/14/01

[Signature] CONTRACTOR SIGNATURE

9/14/01

TITLE

DATE

Oxford Global Resources, Inc. is an Equal Opportunity Employer. Oxford Global Resources, Inc. does not discriminate on the basis of race, color, religion, sex, national origin, age,



Commissioner for Patents
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO.	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/441,471	01/22/2003		160	2401.0316P	1		

EPSTEIN & GERKEN
Suite 340
1901 Research Boulevard
Rockville, MD 20850-3164

CONFIRMATION NO. 6236

FILING RECEIPT



OC000000009534421

Date Mailed: 02/20/2003

Receipt is acknowledged of this provisional Patent Application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

David C. Hacker, Jacksonville, FL;
Stanley A. Skinner, Minneapolis, MN;
Ensor E. Transfeldt, Minneapolis, MN;
Lionel Rupp, Jacksonville, FL;
Peter P. Sterrantino, Jacksonville, FL;

If Required, Foreign Filing License Granted: 02/06/2003

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

Apparatus and methods for providing biphasic stimulation sequences in intraoperative nerve monitoring

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

LAW OFFICES
EPSTEIN & GERKEN
1901 RESEARCH BOULEVARD
SUITE 340
ROCKVILLE, MARYLAND 20850-3164

ROBERT H. EPSTEIN*+
KAREN M. GERKEN

TELEPHONE (301) 610-7634

FACSIMILE (301) 610-9569

OF COUNSEL
ROBERT N. LEVIN
AARON B. RETZER*+

* VA BAR
+ DC BAR

VIRGINIA OFFICE
2341 JEFFERSON DAVIS HWY
SUITE 112
ARLINGTON, VIRGINIA
22202

December 12, 2003

Jaime A. Frias, Esquire
Vice President, Legal Counsel
Medtronic Xomed, Inc.
6743 Southpoint Drive, North
Jacksonville, Florida 32216-0980

Re: New U.S. Patent Application
Apparatus and Method for Intraoperative
Neural Monitoring
Our Ref: 2401.146-US

Dear Jim:

Enclosed are an original and one copy of a non-provisional patent application for the subject invention, a Declaration and Power of Attorney and an Assignment. The application claims priority from prior provisional patent application Serial No. 60/441,471 filed January 22, 2003.

The inventors should review the application carefully for technical accuracy and completeness. Any necessary revisions should be provided on one or more copies of the application, which should be returned to us for incorporation of the revisions into a final draft. If all is in good order, the inventors should sign, date and fill in their addresses and citizenship on the Declaration and should sign and date the Assignment where indicated. You should sign and date the Assignment where indicated on behalf of Medtronic Xomed, Inc. Please return all executed documents to us for filing with the application in the U.S. Patent and Trademark Office.

Jaime A. Frias, Esquire
Page 2
December 12, 2003

With respect to the deceased inventor, Lionel Rupp, the Declaration and Assignment must be executed by the decedent's legal representative, e.g. executor, administrator, heir, assignee. The name, address and citizenship of the legal representative should be provided where indicated on the Declaration and the legal representative's name should be provided where indicated on the Assignment.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Epstein", with a long horizontal flourish extending to the right.

Robert H. Epstein

RHE/als
Email: rhe@epsteingerken.com
Direct Dial: 301-610-7746
Enclosures
cc: Noreen Johnson, Esquire



Medtronic Xomed, Inc.
6743 Southpoint Dr. N.
Jacksonville, Florida 32216-0980

tel 904.296.9600

December 19, 2003

Certified Mail
Return Receipt Requested

Katherine M. Rupp
27 Belver Drive
Bohemia, NY 11716

Re: Patent Application

Dear Ms. Rupp:

We were trying to contact you and found that the phone number we have has been disconnected. In order to file the patent application that your father is one of the inventors on we need some additional information. Could you please contact me at your earliest convenience. My phone number is (904) 332-2476.

We greatly appreciate your assistance in this matter.

Very truly yours,

MEDTRONIC XOMED, INC.

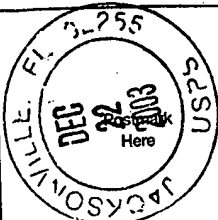
A handwritten signature in cursive script, reading "Eileen F. Horowitz", with a large, stylized flourish at the end.

Eileen F. Horowitz
Senior Paralegal

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

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 Return Receipt Fee
 (Endorsement Required) 1.75
 Restricted Delivery Fee
 (Endorsement Required)
 Total Postage & Fees \$ 442



Sent To Katherine M. Rupp
 Street, Apt. No.,
 or PO Box No. 27 Belver Drive
 City, State, ZIP+ Bohemia NY 11716
 PS Form 3800, January 2001 See Reverse for Instructions

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Katherine M. Rupp
27 Belver Drive
Bohemia, NY 11716

4a. Article Number

7001 1140 0000 15428730

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

Katherine Rupp

6. Signature: (Addressee or Agent)

[Signature]

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

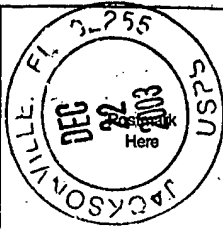
Domestic Return Receipt

Thank you for using Return Receipt Service.

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CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 3.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 442




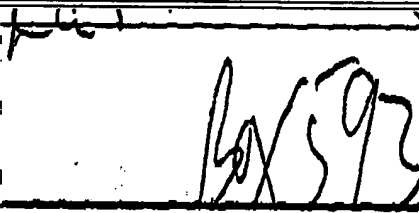
Sent To Katherine M. Rupp
Street, Apt. No., or PO Box No. 27, Belver Drive
City, State, ZIP Bohemia NY 11716
PS Form 3800, January 2001 See Reverse for Instructions

Cindy has both
sig(s) to go to
Post office -
1/15/04

UNITED STATES
POSTAL SERVICE

Track/Confirm - Intranet Item Inquiry
Item Number: 7001 1140 0000 1542 8730

This item was delivered on 01/05/2004 at 15:34.

	Delivery Section
Signature:	 Katherine Papp
Address:	

Enter Request Type and Item Number:

Quick Search ☒ Extensive Search ☐

Explanation of Quick and Extensive Searches

Inquire on

Go to the Product Tracking System

UNITED STATES
POSTAL SERVICE

Track/Confirm - Intranet Item Inquiry - Domestic

Item: 7001 1140 0000 1542 8730

	11716	BOHEMIA	NY

Event	Date	Time	Location	Scanner ID
DELIVERED	01/05/2004	15:34	BOHEMIA NY 11716	L720268
Request Delivery Record				
View Delivery Signature and Address				
NOTICE LEFT	12/31/2003	09:46	BOHEMIA NY 11716	M315626
NOTICE LEFT	12/26/2003	10:13	BOHEMIA NY 11716	L720268
FORWARDED	12/26/2003	10:12	BOHEMIA NY 11716	L720268

Enter Request Type and Item Number:

Quick Search ☒ Extensive Search ☐[Explanation of Quick and Extensive Searches](#)

Submit

Inquire on

Go to the Product Tracking System

Please type a plus sign (+) inside this box → ☐

PTO/SB/01 (12-97)
Approved for use through 9/30/00. OMB 0651-0032
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

DECLARATION — Utility or Design Patent Application

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application or PCT Parent Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (if applicable)

☐ Additional U.S. or PCT international application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

As a named inventor, I hereby appoint the following registered practitioner(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

☐ Customer Number

OR

☒ Registered practitioner(s) name/registration number listed below

Place Customer
Number Bar Code
Label here


Name	Registration Number	Name	Registration Number
Robert H. Epstein	24,353		
Karen M. Gerken	31,161		

☐ Additional registered practitioner(s) named on supplemental Registered Practitioner Information sheet PTO/SB/02C attached hereto.

Direct all correspondence to: ☐ Customer Number or Bar Code Label ☐ OR ☒ Correspondence address below

Name	Robert H. Epstein				
Address	Epstein & Gerken				
Address	1901 Research Blvd., Suite 340				
City	Rockville	State	MD	ZIP	20850
Country	U.S.	Telephone	(301) 610-7634	Fax	(301) 610-9569

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:		<input type="checkbox"/> A petition has been filed for this unsigned inventor			
Given Name (first and middle (if any))		Family Name or Surname			
David C.		Hacker			
Inventor's Signature				Date	12/10/03
Residence: City	Jacksonville	State	FL	Country	US
Post Office Address	818 Old Grove Manor				
Post Office Address					
City	Jacksonville	State	FL	ZIP	32207
		Country	US		

☐ Additional inventors are being named on the _____ supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto

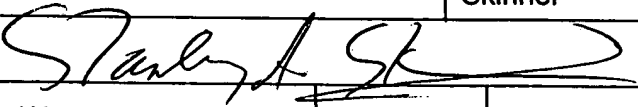
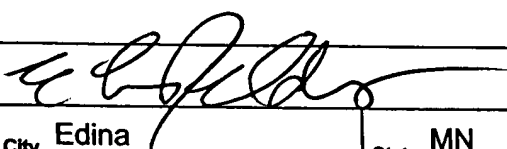

Please type a plus sign (+) inside this box → ☐

PTO/SB/02A (11-00)
Approved for use through 10/31/2002. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet
Page 1 of 2

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Stanley A.		Skinner	
Inventor's Signature 		Date <u>1/5/04</u>	
Residence: City	Wayzata	State	MN
		Country	US
Citizenship US			
Mailing Address 183 Whitegate Lane			
Mailing Address			
City	Wayzata	State	MN
		ZIP	55391
		Country	US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Ensor E.		Transfeldt	
Inventor's Signature 		Date <u>12/29/03</u>	
Residence: City	Edina	State	MN
		Country	US
Citizenship US			
Mailing Address 13 Paddock Road			
Mailing Address			
City	Edina	State	MN
		ZIP	55424
		Country	US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Peter P.		Sterrantino	
Inventor's Signature 		Date <u>12/29/03</u>	
Residence: City	JACKSONVILLE	State	FL
		Country	USA
Citizenship US			
Mailing Address 1832 GRASSINGTON WAY N.			
Mailing Address			
City	JACKSONVILLE	State	FL
		ZIP	32223
		Country	USA

Burden Hour Statement: This form is estimated to take 21 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Please type a plus sign (+) inside this box → ☐

PTO/SB/02A (11-00)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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DECLARATION

ADDITIONAL INVENTOR(S) Supplemental Sheet Page 2 of 2

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Lionel		Rupp	
Inventor's Signature by Katherine Rupp, Legal Representative for Lionel Rupp		Date	
Residence: City Bohemia	State NY	Country US	Citizenship
Mailing Address 27 Belver Drive			
Mailing Address			
City Bohemia	State NY	ZIP 11716	Country US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
Mailing Address			
City	State	ZIP	Country
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
Mailing Address			
City	State	ZIP	Country

Burden Hour Statement: This form is estimated to take 21 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

ASSIGNMENT

WHEREAS, we, David C. Hacker, Stanley A. Skinner, Ensor E. Transfeldt, Peter P. Sterrantino and Lionel Rupp (deceased), have invented certain new and useful improvements in Apparatus and Method for Intraoperative Neural Monitoring, for which a patent application for United States Letters Patent is being filed concurrently herewith and has been assigned Attorney Docket Number 2401.146.US.

WHEREAS, Medtronic Xomed, Inc., a corporation of Delaware, having a place of business at 6743 Southpoint Drive, North, Jacksonville, Florida, 32216, is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent that may be granted therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, and other valuable considerations, we have sold, assigned and transferred, and by these presents do sell, assign and transfer unto Medtronic Xomed, Inc. the full and exclusive right to said invention in the United States and its territorial possessions and in all foreign countries and the entire right, title and interest in and to any and all Letters Patent which may be granted thereon in the United States and its territorial possessions and in any and all foreign countries, and in and to any and all divisions, reissues, continuations and extensions thereof.

We hereby authorize and request the Patent and Trademark Office officials in the United States and in any and all foreign countries to issue any and all of said Letters Patent, when granted, to said Medtronic Xomed, Inc., as the assignee of the entire interest in and to the same, for the sole use and behalf of Medtronic Xomed, Inc., its successors and assigns.

FURTHER, we agree that we will communicate to Medtronic Xomed, Inc., or its representatives, any facts known to us respecting said invention, and testify in any legal proceedings, sign all lawful papers, execute all divisional, continuation, substitution, renewal and reissue applications, execute all necessary assignment papers to cause any and all of said Letters Patent to be issued to Medtronic Xomed, Inc., make all rightful oaths and generally do everything possible to aid Medtronic Xomed, Inc., its successors and assigns, to obtain and enforce proper protection for said invention in the United States and in any and all foreign countries.

IN TESTIMONY WHEREOF, we have hereunto set our hand.

12/30/03
Date

David C. Hacker
David C. Hacker

1/5/04
Date

Stanley A. Skinner
Stanley A. Skinner

12/29/03
Date

Ensor E. Transfeldt
Ensor E. Transfeldt

12/29/03
Date

Peter P. Sterrantino
Peter P. Sterrantino

Date

Katherine Rupp
Legal Representative for Lionel Rupp (deceased)

Accepted on behalf of Medtronic Xomed, Inc. by:

Name: Jaime A. Frias

Signature

Title: Vice President

Date:

Jaime A. Frias
January 7, 2004

Horowitz, Eileen

From: Horowitz, Eileen
Sent: Tuesday, May 11, 2004 9:26 AM
To: 'lcerroni@fbwhlaw.com'
Subject: FW: Estate of Lionel Rupp

Importance: High

I would like to forward to you the documents that need to be signed. I would appreciate you providing your mailing address as soon as possible. Thank you.

-----Original Message-----

From: Horowitz, Eileen
Sent: Wednesday, April 14, 2004 1:56 PM
To: 'lcerroni@fbwhlaw.com'
Subject: FW: Estate of Lionel Rupp
Importance: High

I have not yet heard back from you on this. We are running up against a deadline and need to get this process started. Your prompt attention to this matter is appreciated.

-----Original Message-----

From: Horowitz, Eileen
Sent: Friday, March 12, 2004 2:29 PM
To: 'lcerroni@fbwhlaw.com'
Subject: Estate of Lionel Rupp
Importance: High

We spoke last month regarding the above matter and Medtronic Xomed's need to have the legal representative of the estate sign certain documents so a patent application can be filed. Mr. Rupp was a consultant and pursuant to his consulting agreement he assigned all rights to any intellectual property to Medtronic Xomed. I have attached an electronic version of the agreement and the extensions thereto for your review. In order to complete the necessary documents we need certain information regarding Katherine Rupp, such as, her full legal name; her citizenship; and her residence and mailing address. We would also need a copy of the order appointing her as the executor when it becomes available. As soon as we can prepare the documents I will forward them to you, along with a copy of the signed consulting agreement, for Ms. Rupp's signature. I will need your mailing address also. Please contact me if you have any questions. Thank you for the assistance.



CENTENNIAL
SOCIATES (RANDD)



Extionsion
Letter.doc



Extension Ltr
02-02.doc



WORK ORDER No
2.doc

Eileen F. Horowitz
Senior Paralegal
Medtronic Xomed, Inc.
Phone: 904-332-2476
Fax: 904-332-8914
Email: eileen.f.horowitz@medtronic.com

CONSULTING AGREEMENT

THIS AGREEMENT is made and entered into as of August 1, 2000 ("Effective Date") by and between **Medtronic Xomed Surgical Products, Inc.** a Delaware corporation with offices at 6743 Southpoint Drive North, Jacksonville, Florida 32216, for itself and its affiliated entities ("Medtronic Xomed"), and **Centennial Associates, a division of Oxford Global Resources, Inc.** with an office located at 4 Centennial Drive, Peabody, MA 01960, for itself and its Affiliated persons and entities (collectively "Consultant").

WITNESSETH:

WHEREAS, Medtronic Xomed desires to obtain, and Consultant agrees to provide, services as detailed herein.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Nature of Services. Consultant will provide Medtronic Xomed with consulting services ("Services") as described in, and in accordance with, Work Order Addendum(s) attached to this Agreement (or otherwise later added by written agreement of the parties), and made part of this Agreement. Each Work Order Addendum shall contain specifications regarding Services and items to be prepared and delivered by Consultant in connection therewith and such other provisions as Medtronic Xomed may require.

2. Fees and Payment.

(a) Fees. For satisfactory and timely delivery of Services, Medtronic Xomed agrees to pay Consultant the sum(s) to be described in the applicable Work Order Addendum(s) made part of this Agreement as provided herein.

(b) Assignment Consideration. In consideration for the assignment of any intellectual property rights by Consultant to Medtronic Xomed, Medtronic Xomed agrees to pay Consultant the sum of ten dollars (\$10.00). Said fee is independent of and in addition to any other fees and/or payments specified in this Section 2.

(c) Invoices. Consultant shall invoice Medtronic Xomed weekly for Services provided to Medtronic Xomed during the preceding week. Invoices will be rendered based on time slips that Consultant provides to its Employees and that must be signed by a Medtronic Xomed representative who has the authority to approve the time slip. The signing of the time slip by Medtronic Xomed confirms that Consultant has worked the hours reported.

(d) Payment. Undisputed invoices shall be due and payable by Medtronic Xomed thirty (30) days after the date of each such invoice.

3. Term.

(a) Duration of Term. This Agreement shall commence as of the Effective Date and terminate on July 31, 2001.

(c) Termination of Agreement. This Agreement and/or any Work Order Addendum(s) may be terminated by Medtronic Xomed or Consultant with thirty (30) days written notification. If the work performed does not meet the standards required by Medtronic Xomed ("Performance Standards"), the thirty (30) days notification will be waived. Medtronic Xomed has the right to determine Performance Standards in its sole discretion.

4. Independent Contractor. Consultant and its employees and contractors shall be deemed to be independent contractors in the performance of Services and shall not be considered agents, employees, joint venturers or partners of Medtronic Xomed. Neither Consultant nor any of its representatives shall have the power or right to bind Medtronic Xomed by any representation, act or omission.

5. Conversion. Assignments are made with the understanding that Medtronic Xomed will not employ or otherwise utilize directly or indirectly Consultant's assigned personnel ("Employee") until said Employee's current assignment to Medtronic Xomed's premises exceeds 1,000 hours. Medtronic Xomed understands that Consultant's Employee is a unique and valuable asset of Consultant. Should Medtronic Xomed find it advisable or desirable to transfer the Employee to its payroll prior to the completion of the 1,000 hour minimum assignment, Medtronic Xomed hereby agrees to pay Consultant twenty percent (20%) of the Employee's billable volume based upon forty (40) hour work weeks. This percentage will be reduced by six and one third percent (6.335%) for each 333.5 hours the Employee has worked for Consultant at Medtronic Xomed. Based on this calculation, Medtronic Xomed would not owe and Consultant would not be due any payment if any assigned personnel were hired by Medtronic Xomed once the 1,000 hours have been exhausted.

6. Ownership of Works of Authorship and Invention.

(a) All items developed or prepared for Medtronic Xomed by Consultant hereunder (whether or not completed) together with all modifications, revisions, changes, copies, partial copies, translations, compilations, partial copies with modifications and derivative works, all intangibles associated therewith including, without limitation, trademarks, trade names, copyrights, patents, and records (whether written or electronically kept), and all work performed hereunder, including but not limited to the development, modification or enhancement of design concepts and all other documentation developed for or relating to the item and all documents, data and other information of any kind, including information incorporating, based upon, or derived from the foregoing, including reports and notes prepared by Consultant and its employees and agents ("Materials"), constitute confidential information and are, shall be and shall remain the property of Medtronic Xomed and may not be used by Consultant or its employees or agents for any purpose

except for the benefit of Medtronic Xomed. Neither Consultant nor its employees or agents shall sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Materials or copies thereof, and Consultant and its employees and agents shall treat same as confidential information of Medtronic Xomed.

(b) All applicable rights to patents, copyrights, trademarks, trade secrets and all other property rights in the Materials are, shall be and shall remain in Medtronic Xomed, and neither Consultant nor its employees or agents shall have any property interest in the Materials. Consultant acknowledges that all "works of authorship" (as defined in 17 U.S.C. sec. 102) produced as a result of Services performed for Medtronic Xomed hereunder shall meet the definition of "works made for hire" (as defined in 17 U.S.C. sec. 101) and Medtronic Xomed shall be considered the author and owner of such works under 17 U.S.C. sec. 201(b). In the event that any of the Materials do not meet the definition of "works made for hire," then Consultant shall be deemed to have hereby assigned and transferred to Medtronic Xomed, for good and valuable consideration, all of its copyrights in and to such Materials. The rights assigned herein include, but are not limited to, the right to reproduce said Materials, the right to distribute copies of said Materials, and all other rights accruing to Consultant under the provisions of 17 U.S.C. sec. 106.

(c) Medtronic Xomed has the right to register all copyrights in Materials acquired from Consultant hereunder in Medtronic Xomed's own name and shall have the exclusive right to dispose of such Materials in any way Medtronic Xomed deems appropriate. Consultant waives its right in every country of the world to bring any action against Medtronic Xomed which relates to copyright, author's rights, moral rights or any equivalent theory, in these acquired works. Consultant shall retain no right in such works whatsoever.

(d) Consultant agrees to assist Medtronic Xomed in identifying inventions and filing applications for Letters Patent, if any, which cover any technology developed under this Agreement. Consultant further agrees to promptly, upon request of Medtronic Xomed, communicate any facts known respecting said applications and the inventions set forth therein, and execute and deliver without further compensation any power of attorney, assignment, application, whether original, continuation, divisional or reissue, or other papers which may be necessary or desirable fully to secure to Medtronic Xomed the inventions and any of them described in said applications and all patent rights therein, in the United States and in any foreign country, and to cooperate and assist in the prosecution of interference proceedings involving said inventions and in the adjudication and re-examination of said Letters Patent, provided the reasonable expense which may be incurred by Consultant in lending such cooperation and assistance is paid by Medtronic Xomed.

(e) Without limiting any of the foregoing, Consultant agrees to give Medtronic Xomed and any person designated by Medtronic Xomed reasonable assistance required to perfect the rights defined in this Section 5. Unless otherwise requested by Medtronic Xomed, upon the completion of Services to be performed hereunder, or upon the earlier termination of this Agreement for any reason, Consultant shall immediately turn over to Medtronic Xomed all Materials developed pursuant hereto and no copies thereof shall be retained by Consultant or its employees without the prior written consent of Medtronic Xomed. A certificate evidencing compliance with this provision shall, if requested by Medtronic Xomed, accompany such Materials. All items developed pursuant to this Agreement shall bear Medtronic Xomed's copyright and trade secret notices in the form

required by Medtronic Xomed.

7. Indemnification and Insurance.

(a) Consultant hereby agrees to indemnify and hold harmless Medtronic Xomed or any of its affiliates and their respective directors, officers, employees, agents, representatives or subcontractors, from any and all losses, liabilities, damages, injuries, causes of action, claims, demands and expenses, whether based upon tort, breach of contract, proprietary right infringement, failure to pay taxes of any kind, failure to obtain worker's compensation insurance or otherwise, including the payment of reasonable attorney's fees and legal expenses, arising from or on account of any intentional or negligent act or omission of Consultant during the performance of Services herein provided.

(b) Consultant agrees to defend at its own cost and expense any claim or cause of action against Medtronic Xomed or any of its affiliates and their respective directors, officers, employees, agents, representatives or subcontractors, and to indemnify and hold harmless Medtronic Xomed and such persons from any and all losses, liabilities, damages, injuries, demands and expenses associated with the actual or alleged infringement of any patent, copyright or other property right based on any Services or Materials furnished to Medtronic Xomed by Consultant pursuant to the terms of this Agreement or the use thereof by Medtronic Xomed. If Medtronic Xomed's use of any Materials is enjoined by any court, Consultant will obtain, at no expense to Medtronic Xomed, the right to continue to use such Materials or provide a substitute functionally equivalent to the Materials. If Consultant is unable to comply with the foregoing options, Medtronic Xomed shall receive a full refund of all amounts paid to Consultant for the Materials upon return of the Materials to Consultant.

(c) Consultant shall maintain throughout the term of this Agreement all necessary insurance against injuries or damage to any person or property which are the result of the fault or negligence of Consultant and shall provide proof of such insurance to Medtronic Xomed upon its request.

8. Limitation of Liability. Each party's liability arising out of this Agreement shall be limited to the other party's direct damages and shall not exceed the fee(s) paid to Consultant by Medtronic Xomed for the services rendered hereunder. In no event shall either party be liable for punitive damages, loss of profit, goodwill or other special consequential damages suffered by the other party under this Agreement whether in contract or in tort, even if advised of the possibility of such damages.

9. Confidentiality.

(a) Consultant acknowledges and agrees that this Agreement creates a privileged and confidential relationship between Medtronic Xomed and Consultant and that information and materials concerning Medtronic Xomed's business affairs, business strategies, pricing, costs, employee compensation, marketing plans, developmental plans, customers, vendors, finances, properties, methods of operations, technology, procedures, computer programs and documentation, inventions, developments, trade secrets, and other such information, whether written or oral, is

confidential in nature. All such information is hereinafter collectively referred to as "Confidential Information." Neither Consultant nor his employees or agents shall use, directly or indirectly, for their own benefit or the benefit of others, both during the term of this Agreement and subsequent to its termination, any Confidential Information that may be acquired or developed in connection with or as a result of the performance of this Agreement.

(b) Consultant hereby acknowledges that all of the Confidential Information is and shall continue to be the exclusive property of Medtronic Xomed, whether or not prepared in whole or in part by Consultant and whether or not disclosed to or entrusted to the custody of Consultant. Consultant further hereby acknowledges that all Confidential Information has been disclosed to Consultant solely pursuant to his relationship with Medtronic Xomed under this Agreement and solely for the purpose of assisting him in performing under this Agreement.

(c) Consultant hereby agrees that neither it nor its employees or agents shall, either during the term of this Agreement or at any time thereafter, disclose any Confidential Information, in whole or in part, to any person or entity, for any reason or purpose whatsoever, unless Medtronic Xomed shall have given its written consent to such disclosure. Consultant further agrees that it and its employees and agents shall: (i) exercise reasonable care to prevent dissemination of Confidential Information to third persons; (ii) not make copies of documents, including, without limitation, drawings, notebooks, reports, and video or audio recordings, which embody any Confidential Information unless necessary for Consultant performing under this Agreement; and (iii) not disclose or use Confidential Information in any way that might injure or jeopardize the operations of Medtronic Xomed or any of its clients.

(d) Consultant acknowledges that disclosure of any Confidential Information by Consultant or its employees or agents or an actual or threatened breach by Consultant or its employees or agents of the provisions of this Section will give rise to irreparable injury to Medtronic Xomed, its subsidiaries and/or affiliated companies or the owner of such information, inadequately compensable in damages. Accordingly, Medtronic Xomed or such other party shall be entitled to injunctive relief restraining Consultant or its employees or agents from the breach or threatened breach of the foregoing undertakings. Nothing herein shall be construed as prohibiting Medtronic Xomed or any of its subsidiaries or affiliates from pursuing any other remedies available to any of them for such breach or threatened breach, including the recovery of damages from Consultant.

(e) Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests of Medtronic Xomed, its subsidiaries and/or affiliated companies and are reasonable in scope and content.

10. Representations and Warranties of Consultant. Consultant represents and warrants to Medtronic Xomed that:

(a) Consultant and its employees and agents have all necessary rights, authorizations or licenses to perform their obligations hereunder. This Agreement represents the valid and legally binding obligation of Consultant.

(b) Each of Consultant and its employees and agents assigned to perform Services hereunder will perform in a competent and professional manner in accordance with this Agreement and industry standards.

(c) Medtronic Xomed shall receive free, good and clear title to all items developed under this Agreement.

(d) Each item developed under this Agreement shall be free from defects in material and workmanship and conform to the Performance Standards and any specifications set forth in a Work Order Addendum.

(e) There are no actions, suits, or proceedings instituted or pending or threatened against Consultant, or obligations or liabilities of Consultant, that might have a material adverse effect on Consultant's ability to perform its obligations hereunder.

(f) Each of Consultant and its employees and agents assigned to perform Services hereunder shall perform such services in good faith and shall not knowingly or negligently provide Services or Materials that infringe any patent, trademark, copyright, or other intellectual property rights of any third party.

11. Representations and Warranties of Both Parties. Medtronic Xomed represents and warrants to Consultant that:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and in all jurisdictions where it does business, and has all requisite corporate power and authority to execute, deliver and perform the terms of this Agreement.

(b) The execution, delivery and performance of the obligations of this Agreement have been validly authorized by all necessary corporate action, and this Agreement represents its valid and legally binding obligation.

12. Assignment. The parties recognize that Consultant has unique and particular skills and that Medtronic Xomed has chosen Consultant to perform Services enumerated in this Agreement and the Work Order Addendum(s) on the basis of those skills. Thus, Consultant's obligations under this Agreement are not assignable, in whole or in part, without the prior written consent of Medtronic Xomed.

13. Publicity. Consultant shall not use the name or symbol of Medtronic Xomed without securing Medtronic Xomed's prior written consent.

14. Notice. All notices and other communications hereunder will be in writing and validly given if delivered by hand, facsimile transmission, expedited delivery service or United States mail, registered or certified, return receipt requested, and addressed to the respective addresses as set forth below, or such other address as may be designated pursuant hereto, and effective upon posting:

If to Medtronic Xomed:

Medtronic Xomed Surgical Products, Inc.
6743 Southpoint Drive North
Jacksonville, Florida 32216
Attention: Jaime A. Frias, Esq.
Telephone: (904) 296-9600
Facsimile: (904) 281-2779

If to Consultant:

Centennial Associates, a division of Oxford Global Resources, Inc.
4 Centennial Drive
Peabody, MA 01960
Attention: Joseph Pritzky, Esq.
Telephone: (888) 842-3225, ext. 11
Facsimile: _____

15. Survival. The provisions of this Agreement intended to survive the performance thereof by either party or both parties hereto shall so survive the termination of this Agreement.

16. Severability. In the event any provision of this Agreement is deemed invalid, the remaining provisions shall remain in full force and effect.

17. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of Florida, without regard to any rules of conflict or choice of laws. The parties (i) agree that any legal proceeding arising out of this Agreement shall be brought in the United States District Court for the Middle District of Florida, and (ii) waive any objection to the laying of venue of any such proceeding in such court. The prevailing party will be entitled to costs and reasonable attorneys' fees.

(b) The section headings in this Agreement are for reference only and do not modify or restrict any of the provisions hereof.

(c) This Agreement shall not be valid until signed and accepted by both parties. The parties agree that this Agreement may only be amended in writing by the parties.

(d) This Agreement (including any Work Order Addendum(s) and any other attachment(s) hereto) constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, negotiations and discussions, written or oral, of the parties relating to the transactions contemplated hereby.

(e) The failure by either party to enforce, or the written waiver of, any term or condition of this Agreement or the acceptance of any payment hereunder shall not be deemed a waiver of

further enforcement of that or any other term or condition.

(f) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year first above written.

MEDTRONIC XOMED SURGICAL PRODUCTS, INC.

By: _____
Name:
Title:

**CENTENNIAL ASSOCIATES, a division of
OXFORD RESOURCES, INC.**

By: _____
Name: Joseph Pritzky
Title: Corporate Counsel

LIONEL RUPP CONSULTING AGREEMENT

WORK ORDER ADDENDUM NO. 1

Lionel Rupp will perform engineering design work, prepare engineering drawings and specifications for the High Intensity Focused Ultrasound (HIFU) technology. Additionally, he will assist with XPS® Model 3000 console development. His tasks will include prototyping models to show at the American Academy of Otolaryngology in September of 2000.

Billing Rate: \$79.00 per hour

Per Diem Expenses: INCLUDED in Billing Rate.

Accepted and agreed to this ____ day of _____, 2000

Medtronic Xomed Initials : _____

Consultant Initials: _____

August 1, 2001

Centennial & Associates
a division of Oxford Global Resource, Inc.
4 Centennial Drive
Peabody, MA 01960

Re: Extension of Consulting Agreement

Dear Mr. Pritzky:

Centennial & Associates and Medtronic Xomed Surgical Products, Inc. (now known as Medtronic Xomed, Inc.) entered into a Consulting Agreement on August 1, 2000 (the "Agreement"). This Agreement was scheduled to terminate on July 31, 2001, however, the parties have agreed to extend the Term of the Agreement until December 31, 2001. All capitalized terms used herein shall have the same meaning as in the Agreement.

Attached to this Letter Agreement is Work Order Addendum No. 2 covers the Fees and Services to be performed during the extended Term and shall supercede Work Order Addendum No. 1.

Please sign the bottom of this letter and initial the Work Order to acknowledge your agreement with the contents of these documents. Please keep one copy of the letter and the Work Order for your files.

Very truly yours,

Timothy J. Kriewall, Ph.D.
Vice President, Research & Development

Accepted and agreed to.

CENTENNIAL & ASSOCIATES
a division of Oxford Global Resources, Inc.

By: _____
Name: Joseph Pritzky
Title: Corporate Counsel

January 1, 2002

Centennial & Associates
a division of Oxford Global Resource, Inc.
4 Centennial Drive
Peabody, MA 01960

Re: Extension of Consulting Agreement

Dear Mr. Pritzky:

Centennial & Associates and Medtronic Xomed Surgical Products, Inc. (now known as Medtronic Xomed, Inc.) entered into a Consulting Agreement on August 1, 2000 (the "Agreement"). In a letter dated August 2, 2001 the Agreement was extended until December 31, 2001. This letter hereby further extends the Agreement until May 31, 2002. All capitalized terms used herein shall have the same meaning as in the Agreement.

Please sign the bottom of this letter, keep one copy for your files and return the other to me.

Very truly yours,

Timothy J. Kriewall, Ph.D.
Vice President, Research & Development

Accepted and agreed to.

CENTENNIAL & ASSOCIATES
a division of Oxford Global Resources, Inc.

By: _____
Name: Joseph Pritzky
Title: Corporate Counsel

OXFORD (RUPP) CONSULTING AGREEMENT

WORK ORDER ADDENDUM NO. 2

Services:

Lionel Rupp will perform engineering design work for the Nerve Integrity Monitor (NIM) project. His work will include design analysis, building prototypes, ordering materials, preparing engineering drawings, specifications and reports, maintaining technical records and preparing cost estimates.

Fees:

Billing Rate: \$75.00

Per Diem Expense: included in billing rate

Accepted and agreed this 1st day of August, 2001

Medtronic Xomed Initials: _____

Consultant Initials: _____



Medtronic Xomed, Inc.
6743 Southpoint Dr. N.
Jacksonville, Florida 32216-0980

tel 904.296.9600

May 13, 2004

Certified Mail, Return Receipt Requested

Laurie Cerroni
Fischbein, Badillo, Wagner, Harding
909 Third Avenue
New York, New York 10022

Re: Estate of Lionel Rupp

Dear Ms. Cerroni:

Medtronic Xomed, Inc. employed Lionel Rupp as an engineer in its Jacksonville, Florida facility prior to his death. Mr. Rupp is a named inventor on Medtronic Xomed's Patent Application No. 60/441,471 entitled "Apparatus and Method for Intraoperative Neural Monitoring" that was filed with the U.S. Patent and Trademark Office on January 22, 2004, without Mr. Rupp's signature.

I spoke with you on March 12, 2004 regarding this matter and e-mailed to you that same day documentation regarding Mr. Rupp's employment and Medtronic Xomed's right to the invention. I heard nothing back from you and e-mailed you again on April 14 and May 11, 2004 with no response. I have therefore, enclosed for Katherine Rupp's signature a Declaration for Utility or Design Patent Application and an Assignment. We must file these documents in the Patent office by June 14 in order for the patent application to be processed.

I look forward to hearing back from you. Please do not hesitate to contact me at (904) 332-2476 should you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Eileen F. Horowitz". The signature is written in dark ink and is positioned above the printed name and title.

Eileen F. Horowitz
Senior Paralegal

Enclosures

Please type a plus sign (+) inside this box → ☐

PTO/SB/01 (12-97)
Approved for use through 9/30/00. OMB 0651-0032
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)	Attorney Docket Number	2401.146.US
	First Named Inventor	David C. Hacker
	COMPLETE IF KNOWN	
	Application Number	/
	Filing Date	
	Group Art Unit	
<input checked="" type="checkbox"/> Declaration Submitted with Initial Filing	OR	<input type="checkbox"/> Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)
Examiner Name		

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Apparatus and Method for Intraoperative Neural Monitoring

the specification of which

(Title of the Invention)

☒ is attached hereto
OR

☐ was filed on (MM/DD/YYYY) as United States Application Number or PCT International

Application Number and was amended on (MM/DD/YYYY) (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
			<input type="checkbox"/>	YES	NO
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto:

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)	
60/441,471	01/22/2003	<input type="checkbox"/> Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

[Page 1 of 2]

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Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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DECLARATION — Utility or Design Patent Application

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application or PCT Parent Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (if applicable)

☐ Additional U.S. or PCT international application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

As a named inventor, I hereby appoint the following registered practitioner(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

☐ Customer Number

OR

☒ Registered practitioner(s) name/registration number listed below

Place Customer Number Bar Code Label here

Name	Registration Number	Name	Registration Number
Robert H. Epstein	24,353		
Karen M. Gerken	31,161		

☐ Additional registered practitioner(s) named on supplemental Registered Practitioner Information sheet PTO/SB/02C attached hereto.

Direct all correspondence to: ☐ Customer Number or Bar Code Label OR ☒ Correspondence address below

Name	Robert H. Epstein				
Address	Epstein & Gerken				
Address	1901 Research Blvd., Suite 340				
City	Rockville	State	MD	ZIP	20850
Country	U.S.	Telephone	(301) 610-7634	Fax	(301) 610-9569

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor: ☐ A petition has been filed for this unsigned inventor

Given Name (first and middle (if any))	Family Name or Surname
David C.	Hacker

Inventor's Signature		Date	12/10/00
Residence: City	Jacksonville	State	FL
		Country	US
		Citizenship	US

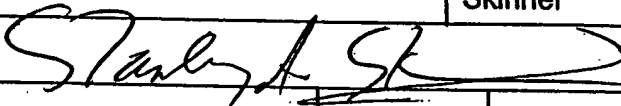
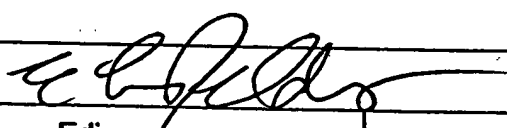
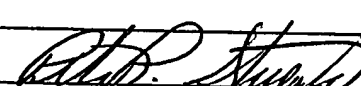
Post Office Address	818 Old Grove Manor		
Post Office Address			
City	Jacksonville	State	FL
		ZIP	32207
		Country	US

☐ Additional inventors are being named on the _____ supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto

Please type a plus sign (+) inside this box → ☐

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DECLARATION	ADDITIONAL INVENTOR(S) Supplemental Sheet Page <u>1</u> of <u>2</u>
--------------------	---

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor					
Given Name (first and middle (if any))		Family Name or Surname					
Stanley A.		Skinner					
Inventor's Signature 		Date <u>1/5/04</u>					
Residence: City	Wayzata	State	MN				
		Country	US				
Citizenship				US			
Mailing Address				183 Whitegate Lane			
Mailing Address							
City	Wayzata	State	MN	ZIP	55391	Country	US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor					
Given Name (first and middle (if any))		Family Name or Surname					
Ensor E.		Transfeldt					
Inventor's Signature 		Date <u>12/29/03</u>					
Residence: City	Edina	State	MN				
		Country	US				
Citizenship				US			
Mailing Address				13 Paddock Road			
Mailing Address							
City	Edina	State	MN	ZIP	55424	Country	US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor					
Given Name (first and middle (if any))		Family Name or Surname					
Peter P.		Sterrantino					
Inventor's Signature 		Date <u>12/29/03</u>					
Residence: City	JACKSONVILLE	State	FL				
		Country	USA				
Citizenship				US			
Mailing Address				1832 GRASSINGTON WAY N.			
Mailing Address							
City	JACKSONVILLE	State	FL	ZIP	32223	Country	USA

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DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet
Page 2 of 2

Name of Additional Joint Inventor, if any:

☐ A petition has been filed for this unsigned inventor.

Given Name (first and middle [if any])

Family Name or Surname

Lionel

Rupp

Inventor's
Signature by Katherine Rupp, Legal Representative for Lionel Rupp

Date

Residence: City Bohemia

State NY

Country US

Citizenship

Mailing Address 27 Belver Drive

Mailing Address

City Bohemia

State NY

ZIP 11716

Country US

Name of Additional Joint Inventor, if any:

☐ A petition has been filed for this unsigned inventor.

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Residence: City

State

Country

Citizenship

Mailing Address

Mailing Address

City

State

ZIP

Country

Name of Additional Joint Inventor, if any:

☐ A petition has been filed for this unsigned inventor.

Given Name (first and middle [if any])

Family Name or Surname

Inventor's
Signature

Date

Residence: City

State

Country

Citizenship

Mailing Address

Mailing Address

City

State

ZIP

Country

Burden Hour Statement: This form is estimated to take 21 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

ASSIGNMENT

WHEREAS, we, David C. Hacker, Stanley A. Skinner, Ensor E. Transfeldt, Peter P. Sterrantino and Lionel Rupp (deceased), have invented certain new and useful improvements in Apparatus and Method for Intraoperative Neural Monitoring, for which a patent application for United States Letters Patent is being filed concurrently herewith and has been assigned Attorney Docket Number 2401.146.US.

WHEREAS, Medtronic Xomed, Inc., a corporation of Delaware, having a place of business at 6743 Southpoint Drive, North, Jacksonville, Florida, 32216, is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent that may be granted therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, and other valuable considerations, we have sold, assigned and transferred, and by these presents do sell, assign and transfer unto Medtronic Xomed, Inc. the full and exclusive right to said invention in the United States and its territorial possessions and in all foreign countries and the entire right, title and interest in and to any and all Letters Patent which may be granted thereon in the United States and its territorial possessions and in any and all foreign countries, and in and to any and all divisions, reissues, continuations and extensions thereof.

We hereby authorize and request the Patent and Trademark Office officials in the United States and in any and all foreign countries to issue any and all of said Letters Patent, when granted, to said Medtronic Xomed, Inc., as the assignee of the entire interest in and to the same, for the sole use and behalf of Medtronic Xomed, Inc., its successors and assigns.

FURTHER, we agree that we will communicate to Medtronic Xomed, Inc., or its representatives, any facts known to us respecting said invention, and testify in any legal proceedings, sign all lawful papers, execute all divisional, continuation, substitution, renewal and reissue applications, execute all necessary assignment papers to cause any and all of said Letters Patent to be issued to Medtronic Xomed, Inc., make all rightful oaths and generally do everything possible to aid Medtronic Xomed, Inc., its successors and assigns, to obtain and enforce proper protection for said invention in the United States and in any and all foreign countries.

IN TESTIMONY WHEREOF, we have hereunto set our hand.

12/30/03
Date

David C. Hacker
David C. Hacker

1/5/04
Date

Stanley A. Skinner
Stanley A. Skinner

12/29/03
Date

Ensor E. Transfeldt
Ensor E. Transfeldt

12/29/03
Date

Peter P. Sterrantino
Peter P. Sterrantino

Date

Katherine Rupp
Legal Representative for Lionel Rupp (deceased)



Accepted on behalf of Medtronic Xomed, Inc. by:

Name: Jaime A. Frias

Signature Jaime A. Frias

Title: Vice President

Date: January 7, 2004

Is your **RETURN ADDRESS** completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
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- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

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1. ☐ Addressee's Address
 2. ☐ Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:

Laurie Cerroni
Fischbein, Badillo, Wagner,
Harding
909 Third Ave.
New York, New York 10022

4a. Article Number

7001 1140 00001542 8747

4b. Service Type

- ☒ Registered
☐ Express Mail
☐ Return Receipt for Merchandise
☐ CQD

7. Date of Delivery

5-19-04

8. Addressee's Address (Only if requested and fee is paid)

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D. Sirois

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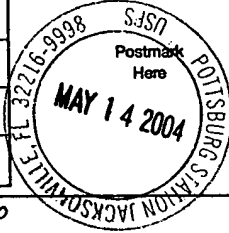
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Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

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909 Third Ave.
City, State, ZIP+4 New York, New York 10022

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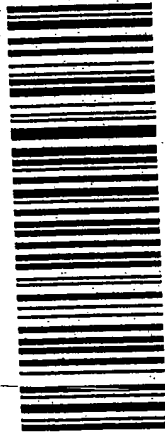
Sent to Laurie Cerroni
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909 Third Ave.
City, State, ZIP+4 New York, New York 10022

PS Form 3800, January 2001

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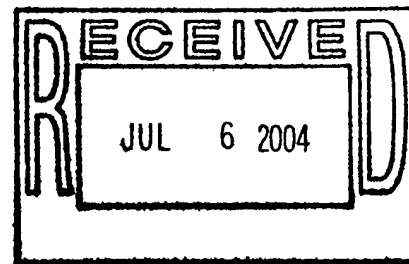
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(212) 826-2000 • FACSIMILE (212) 644-7485

WWW.FBWHLAW.COM

DONALD J. FARINACCI
PARTNER
(631) 694-7010
dfarinacci@fbwhlaw.com



June 28, 2004

Eileen Horowitz, Senior Paralegal
Medtronic Xomed, Inc.
6743 Southpoint Drive North
Jacksonville, Florida 32216-0980

Re: Estate of Lionel Rupp

Dear Ms. Horowitz:

In response to your letter, dated May 13, 2004, concerning the above-named decedent, before our client can consider executing any documents on behalf of the Estate of Lionel Rupp, concerning any inventions related to his employment at Medtronic Xomed, Inc., please provide our office with the following information:

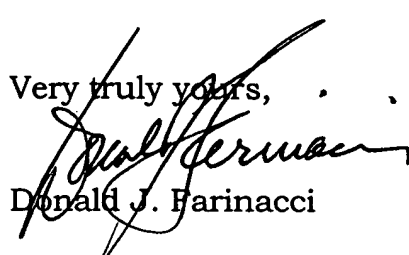
1. Documentation establishing Medtronic Xomed's right to Lionel Rupp's invention.
2. If you are basing your claim on the "Consulting Agreement", please provide a signed copy. The copy you provided is unsigned. (In any event, Lionel Rupp is not a party to the Agreement.)
3. If Medtronic Xomed owns the right to the invention, an explanation as to why an Assignment of Lionel Rupp's rights to the invention is necessary.
4. A statement as to what consideration the Estate of Lionel Rupp is to receive in return for an assignment of the decedent's rights.

Eileen Horowitz, Senior Paralegal
June 28, 2004
Page 2 of 2

We also need to consult with patent law counsel, before allowing our client to sign any documents relating to this matter. We will expect Medtronic Xomed to reimburse the Estate of Lionel Rupp for our legal fees for handling this matter.

Please advise.

Very truly yours,


Donald J. Farinacci

djf/lc

Enclosure(s)

cc: Trevor Arnold, Esq.
(Via Facsimile #901-344-1483)
Katherine Rupp



Medtronic

Medtronic Sofamor Danek
1800 Pyramid Place
Memphis, TN 38132
www.medtronic.com

tel 800.876.3133

Via FedEx

July 7, 2004

Mr. Donald Farinacci
Fischbein, Badillo, Wagner, Harding
909 Third Avenue
New York, NY 10022

Re: Estate of Lionel Rupp
Our Ref. PD251.00

Dear Mr. Farinacci:

Please allow this to serve as a response to your June 28, 2004 letter to Eileen Horowitz. As I discussed the other day with your assistant, I am a Patent and Intellectual Property Attorney for Medtronic Xomed Inc. ("Xomed"). It is my understanding that Eileen has previously sent a Declaration/Power of Attorney and an Assignment to your client Catherine Rupp. Please have Ms. Rupp fully execute those documents and return the originals to me for filing with the U.S. Patent and Trademark Office.

Please find enclosed the signed copy of the Consulting Agreement between Xomed and Centennial Associates, a division of Oxford Global Resources, Inc. ("Oxford") including Work Order Addendum No. 1 specifically relating to Lionel Rupp's consulting work for Xomed. Paragraph 6 of the agreement clearly states that any and all intellectual property developed by Oxford and Lionel Rupp will be the property of Xomed and that Oxford and Mr. Rupp will assist Xomed in the filing and prosecuting of any patent applications and will execute and deliver any Power of Attorney, Declaration and/or Assignment without further compensation. In addition, please find enclosed a signed copy of the Contractor Agreement between Lionel Rupp and Oxford. As you will see from paragraph 12, Lionel Rupp agreed that any intellectual property resulting from his services with Xomed are the property of Xomed. In addition to the above contractual duty to assign the subject inventions to Xomed, Xomed has a common law property right to the subject invention, as it is a work made-for-hire. As such, Lionel Rupp or the representatives of his estate has a contractual and common law duty to fully execute the Declaration/Power of Attorney and Assignment without further compensation.

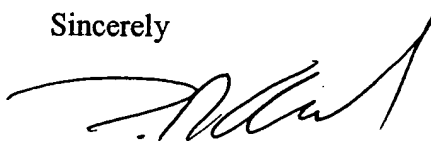
The reason Xomed needs these two documents fully executed is for two basic reasons. The Declaration/Power of Attorney gives myself and the other patent attorneys listed on the document the right to prosecute this application with the U.S. Patent Trademark Office and

When Life Depends on Medical Technology

amend the claims as necessary. The fully executed assignment is filed with the U.S. Patent and Trademark Office in order to put third parties on notice as to ownership.

It is my belief that the contracts are clear and unambiguous and that this is simply a matter of contract law. As such, we see no need for Lionel Rupp's Estate to accrue any unnecessary fees associated consultation with another patent attorney. However, if you feel that this is necessary Lionel Rupp or his estate has the contractual duty to undertake this expense. Please be aware that the delay in receiving these fully executed documents has already cost Xomed over one thousand dollars in extension fees with the United States Patent and Trademark Office and the longer the delay the more this amount will increase. As such, once you have had a chance to fully consider this matter, please send me the fully executed documents or contact me with your questions or concerns at your earliest opportunity.

Sincerely



Trevor D. Arnold
Sr. Patent Counsel

TDA:cjm

cc: Jim Frias
Noreen Johnson

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105 MAXESS ROAD, SUITE 124, MELVILLE, NEW YORK 11747

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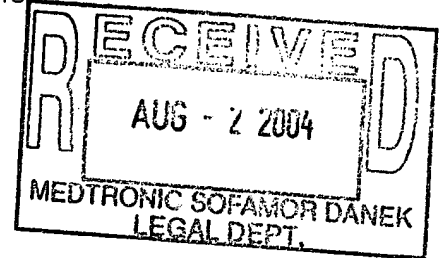
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DONALD J. FARINACCI
PARTNER
(631) 694-7010
dfarinacci@fbwhlaw.com



July 27, 2004

Trevor D. Arnold, Esq.
Senior Patent Counsel
Medtronic Sofamor Danek
1800 Pyramid Place
Memphis, TN 38132

Re: Estate of Lionel Rupp
Your Reference: PD251.00

Dear Mr. Arnold:

On behalf of our client, the Estate of Lionel Rupp, we neither agree nor disagree with the assertion in your letter of July 7, 2004, that Medtronic Xomed has certain intellectual property rights to a particular invention. We have not been provided with sufficient documentation to reach a conclusion one way or the other.

What is clear to us, however, is that neither Lionel Rupp nor his estate was or is under any affirmative legal obligation to Medtronic Xomed to execute and deliver an assignment or any other documents. You are correct that this is a matter of contract law, but that is precisely the point. There was no privity of contract between Lionel Rupp and your client. Your client's consulting agreement was with Centennial Associates, a division of Oxford Global Resources, Inc.

Whatever duties Centennial Associates or Oxford may or may not owe your client, they have nothing to do with Lionel Rupp. The "Work Order Addendum No. 1" contains no agreement by Lionel Rupp concerning intellectual property. It doesn't even mention it. It appears

Trevor D. Arnold, Esq.
June 28, 2004
Page 2 of 2

to simply be a short statement of his job description and compensation rate. There is also no language in said Work Order from which it could reasonably be inferred that Lionel Rupp adopted the Medtronic-Centennial Consulting Agreement. In fact, no proof has been presented that he even knew of its existence or its contents. Surely, an agreement between corporations does not bind employees who are not even parties to the agreement.

In point of fact, Lionel Rupp's contract appears to have been solely with his employer, Oxford Global Resources, Inc. Interestingly, the purported contract between Rupp and Oxford states that "the employee shall remain an employee of Oxford at all times and shall not be considered an employee of the client" (who, incidentally, is unnamed and unidentified).

While *respondeat superior* may apply and Oxford could have vicarious liability for the actions of its employees, surely the employee cannot be held liable for the acts or omissions of his employer.

We believe your exclusive recourse, if any recourse exists, would be against Oxford Global Resources, Inc. or its Centennial Associates division.

Any further demands upon our client will be deemed frivolous.

Very truly yours, ,


Donald J. Farinacci

djf/lc
cc: Catherine Rupp

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